

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

**In re:**

**MID-STATES SUPPLY COMPANY, INC.,  
  
Debtor.**

**Chapter 11**

**Case No. 16-\_\_\_\_ (\_\_\_\_)**

**MOTION TO PAY PREPETITION SALES TAX LIABILITY**

Debtor Mid-States Supply Company, Inc. (“Debtor”), pursuant to 11 U.S.C. §§ 105, 363, and 1129, for its Motion to Pay Prepetition Sales Tax Liability (the “Motion”), states and alleges as follows:

**Procedural Background**

1. On February 7, 2016 (the “Petition Date”), Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Missouri.
2. Debtor remains in possession of its assets and continues to operate as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.
3. An Official Committee of Unsecured Creditors has not yet been appointed.
4. This is a core proceeding pursuant to 28 U.S.C. § 157(2)(A).
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

**Debtor’s Background**

7. Debtor supplies pipes, valves and fittings to ethanol, pipeline and power industries in the United States. It also offers hoses, tools, compounds, gauges and thermometers. In addition, Debtor provides compressed air, steam, process control and services, along with IT

solutions, such as project and customer websites, PocketPC software, customer inventory management, integrated supply, order tracking system and communication options. Debtor's products are sold to a myriad of industries, including large industrial plant operations, food production, oil and gas pipeline transportation, mechanical construction and other large industrial players.

8. Founded and headquartered in Kansas City, Missouri since 1947, Debtor, a family-owned company, operates out of 23 locations, certain of which branches operate under the "Midco" fictitious brand name, in the following states—Alabama, Colorado, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, Utah, West Virginia and Wyoming. Debtor currently has approximately 228 employees.

9. On September 1, 2011, Debtor entered into Credit and Security Agreement, as amended from time to time (the "Credit Agreement") with Wells Fargo Bank, National Association ("Wells Fargo"), under which it borrowed \$45 million, which line grew with its growth to approximately \$60 million. Using the expanded availability from Wells Fargo, Debtor roughly doubled its sales and EBITDA from fiscal 2011 through today. By 2015, a confluence of factors, including the demand for inventory with over 32,000 SKU's, no concentration in the customer base (meaning a broad demand for stocked product) and a rapid decline in the oil and gas sector, kept Debtor's inventory and payables at unsustainably high levels. These factors led Debtor's management to implement plans to right-size the business with respect to inventory, payables, rationalizing the customer base, operating expenses and tightly managing cash flow.

10. As a result of various defaults under the Credit Agreement, on August 28, 2015, Debtor entered into its first forbearance agreement with Wells Fargo. In connection with this forbearance agreement and Debtor's restructuring efforts, on August 25, 2015, Debtor engaged

Winter Harbor LLC to provide certain services of a chief restructuring officer (“CRO”) and other support services. Stuart Noyes has been acting as Debtor’s CRO since August 2015 pursuant to an engagement letter dated August 25, 2015, which is discussed in further detail in Debtor’s application to employ Winter Harbor LLC.

11. Since the first forbearance agreement with Wells Fargo, Debtor has entered into two other forbearance agreements with Wells Fargo, the most recent of which, dated December 28, 2015, expires by its terms on February 29, 2016 and contains numerous benchmarks (the “Benchmarks”). While Debtor and its CRO have been working tirelessly to restructure its business and meet the Benchmarks, Debtor has determined in its business judgment that filing the captioned bankruptcy case is in the best interest of its creditors.

#### **Relief Requested**

12. During the ordinary course of its business operations, Debtor is required to collect sales taxes and remit such taxes to the appropriate taxing authority in accordance with applicable law.

13. As of the Petition Date, Debtor has collected sales taxes, but has not yet remitted those sales to the state taxing authorities, which unpaid sales taxes total approximately \$300,000 (“Current Sales Tax Liability”). Attached as **Exhibit A** is a list of the taxing authorities to which Debtor may have Current Sales Tax Liability.

14. Code § 363(b) permits Debtor, after notice and a hearing, to take actions outside of the ordinary course of business when it is in the best interests of the estate. *See In re Apex Oil Co.*, 92 B.R. 847 (Bankr. E.D. Mo. 1988).

15. If Debtor does not pay Current Sales Tax Liability, the appropriate taxing authorities may attempt to suspend Debtor’s business operations, file liens, seek to lift the automatic stay and pursue other remedies that will cause harm to the estate.

**Necessity for Immediate Relief**

16. Federal Rule of Bankruptcy Procedure 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant ... (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition ....” The Third Circuit Court of Appeals has interpreted the “immediate and irreparable harm” language in the context of preliminary injunctions to mean a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. Appx. 907, 910 (3rd Cir. 2007). If Debtor is not permitted to continue its ordinary business operations by continuing to pay Current Sales and Use Tax Liability, immediate and irreparable harm will result. Accordingly, Debtor submits that for the reasons set forth herein, the relief requested is consistent with Bankruptcy Rule 6003.

WHEREFORE, Debtor requests that this Court enter an Order granting the Motion, permitting Debtor to pay Current Sales Tax Liability and granting any other relief at equity or law this Court deems necessary.

Date: February 7, 2016

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PROPOSED COUNSEL FOR DEBTOR

**EXHIBIT A**  
**Governmental Authorities**

Tax Type	Entity	Address Line 1	Address Line 2	City	State	Zip Code
CITY SALES TAX	CITY OF GREELEY COLORADO	P.O. BOX 1648		GREELEY	CO	80632
CITY SALES TAX	CADDO-SHREVEPORT SALES & USE TAX COMMISSION	P.O. BOX 104		SHREVEPORT	LA	71161
CITY SALES TAX	ST MARTIN PARISH SCHOOL BOARD SALES & USE TAX DEPARTMENT	P.O. BOX 1000		BREAUX BRIDGE	LA	70517
CITY SALES TAX	PARISH OF IBERVILLE	P.O. BOX 355		PLAQUEMINE	LA	70765-0355
SALES TAX	ALABAMA DEPARTMENT OF REVENUE	50 N. RIPLEY		MONTGOMERY	AL	36132
SALES TAX	ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION	SALES AND USE TAX SECTION	P.O. BOX 8092	LITTLE ROCK	AR	72203-8092
SALES TAX	COLORADO DEPARTMENT OF REVENUE	1375 SHERMAN ST.		DENVER	CO	80261-0013
SALES TAX	GEORGIA DEPARTMENT OF REVENUE	P.O. BOX 105499		ATLANTA	GA	30348-5499
SALES TAX	ILLINOIS DEPARTMENT OF REVENUE	P.O. BOX 19014		SPRINGFIELD	IL	62794-9014
SALES TAX	INDIANA DEPARTMENT OF REVENUE	P.O. BOX 6197		INDIANAPOLIS	IN	46206-6197
SALES TAX	IOWA DEPARTMENT OF REVENUE	P.O. BOX 10412		DES MOINES	IA	50306
SALES TAX	KANSAS DEPARTMENT OF REVENUE	915 SW HARRISON STREET		TOPEKA	KS	66612-1588
SALES TAX	KENTUCKY DEPARTMENT OF REVENUE	501 HIGH STREET		FRANKFORT	KY	40601
SALES TAX	LOUISIANA DEPARTMENT OF REVENUE	P.O. BOX 5199		BATON ROUGE	LA	70821-5199
SALES TAX	MINNESOTA DEPARTMENT OF REVENUE	ATTN: SALES AND USE TAX DIVISION	MAIL STATION 6330	SAINT PAUL	MN	55146-6330
SALES TAX	MISSISSIPPI DEPARTMENT OF REVENUE	P.O. BOX 1033		JACKSON	MS	39215
SALES TAX	MISSOURI DEPARTMENT OF REVENUE	TAXATION DIVISION	P.O. BOX 3350	JEFFERSON CITY	MO	65105-3350
SALES TAX	NEBRASKA DEPARTMENT OF REVENUE	P.O. BOX 98923		LINCOLN	NE	68509-8923
SALES TAX	STATE OF NEW MEXICO TAXATION & REVENUE DEPARTMENT	P.O. BOX 25128		SANTA FE	NM	87504-5128
SALES TAX	NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER	600 E. BOULEVARD AVE	DEPT. 127	BISMARCK	ND	58505-0599
SALES TAX	OKLAHOMA TAX COMMISSION	P.O. BOX 26850		OKLAHOMA CITY	OK	73126-0850
SALES TAX	PENNSYLVANIA DEPARTMENT OF REVENUE	P.O. BOX 280905		HARRISBURG	PA	17128-0905
SALES TAX	SOUTH DAKOTA DEPARTMENT OF REVENUE	445 EAST CAPITOL AVENUE		PIERRE	SD	57501
SALES TAX	TENNESSEE DEPARTMENT OF REVENUE	ANDREW JACKSON BUILDING	500 DEADERICK STREET	NASHVILLE	TN	37242
SALES TAX	TEXAS COMPTROLLER OF PUBLIC ACCOUNTS	P.O. BOX 13528		AUSTIN	TX	78711-3528
SALES TAX	UTAH STATE TAX COMMISSION	210 N 1950 W		SALT LAKE CITY	UT	84134-0400
SALES TAX	WEST VIRGINIA STATE TAX DEPARTMENT	STATE TAX DEPARTMENT, TAXPAYER SERVICES DIV.	P.O. BOX 3784	CHARLESTON	WV	25337-3784
SALES TAX	WYOMING DEPARTMENT OF REVENUE	122 W 25TH ST. 2W		CHEYENNE	WY	82002-0110
USE TAX	IOWA DEPARTMENT OF REVENUE	P.O. BOX 10412		DES MOINES	IA	50306
USE TAX	KANSAS DEPARTMENT OF REVENUE	915 SW HARRISON STREET		TOPEKA	KS	66612-1588